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Attorneys for Defendants
C. R. Bard, Inc. and
Bard Peripheral Vascular, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION FOR
LEAVE TO FILE UNDER SEAL
CERTAIN EXHIBITS IN
SUPPORT OF BARD'S REPLY IN
SUPPORT OF MOTION TO
EXCLUDE THE OPINIONS OF
DAVID KESSLER, M.D. AND
MEMORANDUM OF LAW IN
SUPPORT**

Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively
"Bard") hereby respectfully move this Court, pursuant to the Stipulated Protective Order
(Doc. 269), Federal Rule of Civil Procedure 26(c)(1)(G), and Local Civil Rule 5.6 for
leave to file under seal certain exhibits attached in support of Bard's Reply in Support
Motion to Exclude the Opinions of David Kessler, M.D. and Memorandum of Law in
Support. These exhibits, contain certain trade secrets and confidential information that are

protected under the Stipulated Protective Order, warranting protection from public disclosure. Accordingly, there is good cause to grant Defendants' Motion for Leave to File Under Seal Certain Exhibits in Support of Bard's Reply in Support of Motion to Exclude the Opinions of David Kessler, M.D. Defendants have notified Plaintiffs of their intent to file this Motion. Plaintiffs have agreed to the filing of such motions in the past; however, to date, Plaintiffs' have not yet responded to Defendants' attempts to meet and confer on whether Plaintiffs oppose the Motion once Plaintiffs have had an opportunity to review the documents in issue. A list of the Exhibits sought to be sealed are attached hereto as Exhibit A.

ARGUMENT AND CITATION OF AUTHORITY

"When a court grants a protective order for information produced during discovery, it already has determined that 'good cause' exists to protect this information from being disclosed to the public by balancing the needs for discovery against the need for confidentiality." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002). *See also, Medicis Pharm. Corp. v. Acella Pharm., LLC*, CV 10-1780-PHX-JAT, 2012 WL 2260928 at *2 (D. Ariz. June 15, 2012) (sealing exhibits related to "Medicis' marketing strategy, Acella's product formulation,...various e-mails and deposition transcripts, viscosity test data, sales and marketing information, and various other documents" because "[m]uch of this information has been previously sealed by the Court, has been designated as confidential by the parties pursuant to the protective order in this case, or could otherwise potentially harm the parties if released publicly because of its confidential and sensitive nature.").

Certain exhibits to Bard's Motion to Exclude the Opinions of David Kessler, M.D., specifically Exhibit A, which copies verbatim portions of Dr. Kessler's Expert Report and Dr. Kessler's Schedules attached to his report (the Report and Schedules themselves were filed under seal as Exhibits A and D to Bard's original motion (Dkt. No. 7309)), contain pieces of highly competitive, confidential, proprietary information that warrant protection under Federal Rule of Civil Procedure 26(c)(1)(G) because the documents are not made

1 public by Bard and, if obtained by Bard's competitors, could give an unfair economic
 2 advantage to those competitors. *Blanchard & Co., Inc. v. Barrick Gold Corp.*, No. 02-
 3 3721, 2004 WL 737485, at *5 (E.D. La. Apr. 5, 2004) (citing *Pansy v. Borough of*
 4 *Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). Dr. Kessler's Reports cite and extensively
 5 quote dozens of confidential Bard documents, including technical and design files, testing
 6 documents, internal adverse event investigations and analysis, design and risk
 7 management documents, and numerous internal e-mails between high-level Bard
 8 employees. The Reports quote so extensively from confidential documents that filing the
 9 Reports is akin to filing the documents themselves. Except for a small number of publicly
 10 available documents, all of the Bard documents cited in the Reports were produced to
 11 Plaintiffs as "Confidential – Subject to Protective Order" on each page pursuant to
 12 Stipulated Protective Order (Doc. 269) ¶ 6. Exhibit A compares the Bard documents
 13 quoted by Dr. Kessler in his report to the Bard documents quoted in the schedules
 14 prepared by Plaintiffs' counsel. So, the chart necessarily quotes Bard's internal
 15 documents.

16 The public disclosure of this exhibit would reveal confidential, proprietary and
 17 trade secret information and would create a heightened risk of irreparable harm to Bard's
 18 competitive business concerns. Further, its inclusion in the public record would not only
 19 harm Bard because of the trade secrets and confidential information it contains, but it
 20 would also eviscerate the significant time and resources Bard has expended in protecting
 21 its business information. The potential for abuse and for competitive loss are real.
 22 Accordingly, Defendants request that the exhibits identified in Exhibit A be sealed.

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1 RESPECTFULLY SUBMITTED this 18th day of October, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that October 18, 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
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EXHIBIT A

DOCUMENTS PROPOSED TO BE FILED UNDER SEAL

Defendants request they be permitted to file under seal the following documents in support of their Reply in Support of Motion to Exclude the Opinions of David Kessler, M.D.

Exhibit A. Chart Comparing Expert Report of David Kessler, M.D. to Schedules Attached to Expert Report of David Kessler, M.D.